

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 376

Introduced by Assembly Member Nava

February 23, 2009

An act to add Division 25.8 (commencing with Section 38900) to the Health and Safety Code, relating to greenhouse gas emission offsets.

LEGISLATIVE COUNSEL'S DIGEST

AB 376, as amended, Nava. Voluntary greenhouse gas emission offsets.

Existing law creates a statewide greenhouse gas emission limit equivalent to what the statewide greenhouse gas emissions level was in 1990, to be achieved by 2020. The State Air Resources Board is the state agency charged with monitoring and regulating sources of greenhouse gases in order to reduce emissions of greenhouse gases.

~~This bill would state the intent of the Legislature to enact legislation to provide protections for consumers of voluntary greenhouse gas emission offsets, including both businesses and individuals, and help ensure that their participation in the market brings the expected environmental benefits~~ *require a person selling a voluntary offset, as defined, in the state to clearly and conspicuously disclose specific information in any marketing materials for the voluntary offset. The bill, beginning January 1, 2011, would require an entity that sells a voluntary offset in the state to ensure that each voluntary offset sold has a unique serial number and is registered with and tracked by a registry, as defined. The bill would require a registry to meet certain documentation and tracking requirements. The bill, except as specified, would prohibit a person from registering a voluntary offset with more*

than one registry concurrently. The bill would prohibit a person from selling, allocating, awarding, transferring, or claiming a voluntary offset for retirement more than once. The bill would authorize a person to resell a voluntary offset that has been previously sold if all rights and benefits associated with the voluntary offset are sold each time the offset is sold. The bill would subject any person who violates those provisions to a civil penalty of not more than \$10,000 for each violation.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) Global warming poses a serious challenge to public health,
4 the environment, and the economy.

5 (2) With increasing concern regarding global warming, there
6 has been an increase in the advertising, sale, and transfer of
7 greenhouse gas emission reduction credits, offsets, and similar
8 products designed to allow individuals or entities, or both, to
9 purchase emission reduction credits in lieu of actually making
10 those reductions themselves.

11 (3) The market for the trading of voluntary greenhouse gas
12 emissions offsets exceeds three hundred fifty million dollars
13 (\$350,000,000) and represents a reduction of over 70,000,000
14 metric tons of carbon dioxide equivalents annually.

15 (4) A significant amount of retail voluntary greenhouse gas
16 emissions offsets are purchased by California residents, businesses,
17 and government agencies.

18 (5) Some voluntary offsets sold to retail customers are certified
19 as being real, measurable, and verifiable. However, there are
20 numerous public and private entities that create and certify offset
21 projects, and these entities may apply different standards to projects
22 with inconsistent results, generating confusion at the customer
23 level.

24 (6) In addition, concerns have been raised about instances of
25 potential fraud or misrepresentation in the voluntary offset market,
26 which is difficult to address in the absence of clear standards for
27 retail offsets.

1 (7) The purchase and sale of voluntary offsets at the retail level
2 represents an important opportunity for all Californians to take
3 part in projects that immediately reduce California's greenhouse
4 gas emissions and bring important additional local benefits to
5 California communities.

6 (8) Consumers and other members of the public have few
7 protections or standardized methods by which to ensure that they
8 are purchasing or obtaining emission reduction credits that actually
9 reduce greenhouse gases, reduce global warming, and improve the
10 environment.

11 (9) The voluntary offset market will continue to grow along
12 with the compliance market for a variety of reasons, including all
13 of the following:

14 (A) Voluntary project protocols take less time to adopt than
15 compliance protocols and could serve as a testing ground for
16 compliance grade offsets.

17 (B) Voluntary credits have a lower cost than compliance offsets
18 and offer consumers an alternative to compliance grade project
19 prices.

20 (C) Voluntary credits offer opportunities abroad and provide
21 access to a larger range of reductions and emission reduction
22 projects.

23 (b) ~~It is the intent of the Legislature to enact legislation to~~
24 ~~provide protections for consumers of voluntary greenhouse gas~~
25 ~~emission offsets, including both businesses and individuals, and~~
26 ~~help ensure that their participation in the market brings the expected~~
27 ~~environmental benefits.~~ *create through this act a process for*
28 *ensuring that voluntary offsets sold at the retail level in California*
29 *meet clear and consistent disclosure and registration standards.*

30 (c) *It is the further intent of the Legislature that the State Air*
31 *Resources Board develop another process, independent from that*
32 *created pursuant to this act, to regulate any market-based*
33 *compliance mechanisms adopted pursuant to the California Global*
34 *Warming Solutions Act of 2006 (Division 25.5 (commencing with*
35 *Section 38500) of the Health and Safety Code).*

36 SEC. 2. *Division 25.8 (commencing with Section 38900) is*
37 *added to the Health and Safety Code, to read:*

*DIVISION 25.8. GREENHOUSE GAS EMISSION OFFSET
SALES*

CHAPTER 1. GENERAL PROVISIONS

38900. As used in this division:

(a) "Certification body" means any organization that does all of the following:

(1) Develops or adopts protocols for determining the eligibility of projects to generate greenhouse gas emission reductions.

(2) Develops or adopts methodologies for the quantification of the emission reductions created by offset projects.

(3) Sets up the verification procedures for the projects certified by the verifying organization.

(b) "Greenhouse gas" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, and any other gases designated by the state board or Legislature that contribute to climate change.

(c) "Marketing materials" means promotional and informational materials that include descriptions of the voluntary offsets and can reasonably be determined to be intended to inform the consumer about available products or influence a consumer's decision to purchase specific products, that could include, but are not limited to, promotional materials on the Internet, in brochures, and advertisements.

(d) "Project" refers to a greenhouse gas reduction project that reduces emissions of greenhouse gases or increases sequestration of greenhouse gases in a manner that is real, additional, measurable, and verifiable, and thereby creates a voluntary offset that may be sold. Projects may include, but are not limited to, forestry-based projects, methane capture and destruction projects, fuel switching projects, and stationary combustion emission reduction projects.

(e) "Registry" means an organization that does all of the following:

(1) Registers projects that generate voluntary offsets and records the type of voluntary actions generating the offset.

(2) Issues a unique serial number for each registered voluntary offset.

1 (3) *Tracks ownership, verifies authentic origination, and records*
2 *retirement of voluntary offsets.*

3 (f) *“Retirement” of a voluntary offset means to eliminate an*
4 *offset from a registry so that no one can use, claim, or report that*
5 *offset as an emission reduction.*

6 (g) *“State board” means the State Air Resources Board.*

7 (h) *“Voluntary offset” means any product sold in the state that*
8 *claims to be a “greenhouse gas emission offset,” a “voluntary*
9 *emission reduction,” a “retail offset,” or any like term, which*
10 *connotes that the product represents or corresponds to a reduction,*
11 *not required by any law or regulation, in the amount of greenhouse*
12 *gases present in the atmosphere or that prevents the emission of*
13 *greenhouse gases into the atmosphere that would have otherwise*
14 *been emitted. Voluntary offsets for the purposes of this subdivision*
15 *do not include any greenhouse gas reduction measures, including*
16 *voluntary greenhouse gas emission reduction measures or*
17 *market-based compliance mechanisms, used to comply with*
18 *greenhouse gas emission limits established by any law or*
19 *regulation, including, but not limited to, limits established pursuant*
20 *to the California Global Warming Solutions Act of 2006 (Division*
21 *25.5 (commencing with Section 38500)), the California*
22 *Environmental Quality Act (Division 13 (commencing with Section*
23 *21000) of the Public Resources Code), or federal law or regulation.*

24 38901. *Beginning January 1, 2010, a person selling a voluntary*
25 *offset in the state shall clearly and conspicuously disclose in any*
26 *marketing materials for the voluntary offset all of the following:*

27 (a) *The geographic location of the project used to create the*
28 *voluntary offset, including, but not limited to, the country of origin.*
29 *If the project is located in the United States, the state or states*
30 *where the emission reduction or reductions took place shall be*
31 *disclosed.*

32 (b) *The date or range of dates that the emission reduction*
33 *represented by the voluntary offset occurred or will occur.*

34 (c) *A brief description of the project used to create the voluntary*
35 *offset.*

36 (d) *Limitations on the permanence of the emission reductions*
37 *that correspond to the voluntary offset, including the potential for*
38 *unexpected reversal of an emission reduction, and the basis of*
39 *claims of permanence.*

1 (e) *The name of the certification body or governmental entity*
2 *protocol under which the voluntary offset was verified. If the*
3 *voluntary offset is not verified using protocols stipulated by a*
4 *certification body or governmental entity, the seller shall clearly*
5 *and conspicuously disclose in the marketing materials that the*
6 *voluntary offset or voluntary offsets being sold are not verified*
7 *under protocols accepted by a governmental agency or certification*
8 *body.*

9 (f) *The name of the protocol under which the project's emissions*
10 *reductions were quantified. If the project's emission reductions*
11 *that produced the voluntary offset are not quantified using*
12 *protocols stipulated by a certification body or governmental entity,*
13 *the seller shall clearly and conspicuously disclose in the marketing*
14 *materials that the voluntary offset or voluntary offsets being sold*
15 *are not quantified under protocols accepted by a governmental*
16 *agency or certification body.*

17 (g) *The name of the registry where the voluntary offset is*
18 *registered.*

19 (h) *Information on any significant environmental or public*
20 *health impacts associated with the creation and maintenance of*
21 *the voluntary offset project, including, but not limited to, impacts*
22 *on species, habitat, ecosystems, land use, air quality, and water*
23 *supply and quality.*

24 38902. (a) *Beginning January 1, 2011, a person who sells a*
25 *voluntary offset in the state shall ensure that each voluntary offset*
26 *sold has a unique serial number and is registered with and tracked*
27 *by a registry.*

28 (b) *Every registry shall maintain documentation of the serial*
29 *number assigned to each of the voluntary offsets it registers.*

30 (c) *Every sale of a voluntary offset for the purposes of retirement*
31 *shall be reported to the registry tracking that offset's serial*
32 *number, and recorded to ensure that the offset has been retired*
33 *and cannot be sold again or be claimed to reduce the same*
34 *emissions more than once.*

35 38903. (a) *A person shall not register a voluntary offset with*
36 *more than one registry concurrently unless the registrations are*
37 *linked in a fashion that prevents simultaneous purchases and*
38 *retirements of that offset. A registry may however transfer an offset*
39 *to another registry.*

1 (b) A person shall not sell, allocate, award, transfer, or claim
2 a voluntary offset for retirement more than once.

3 (c) A person may resell a voluntary offset that has been
4 previously sold if all rights and benefits associated with the
5 voluntary offset are sold each time the offset is sold.

6 38904. (a) A person shall not sell, offer for sale, advertise, or
7 label any product in violation of this division.

8 (b) A person shall not willfully make a false statement or
9 representation, or knowingly fail to disclose a fact required to be
10 disclosed, or falsify or alter any document or form to misinform
11 or mislead the public.

12 38905. Nothing in this division is intended to prevent consumers
13 from using the Consumers Legal Remedies Act (Title 1.5
14 (commencing with Section 1750) of Part 4 of Division 3 of the
15 Civil Code) or any other law to take action against producers or
16 marketers of offsets, or from recovering associated court costs
17 and attorney's fees pursuant to Section 1021.5 of the Code of Civil
18 Procedure or any other law.

19 38906. Nothing in this division is intended to alter the
20 implementation of the California Global Warming Solutions Act
21 of 2006 (Division 25.5 (commencing with Section 38500)) by the
22 state board.

23
24 CHAPTER 2. ENFORCEMENT
25

26 38920. (a) Any person who violates any provision of this
27 division is liable for a civil penalty of not more than ten thousand
28 dollars (\$10,000) for each violation.

29 (b) The Attorney General, a district attorney, a city attorney,
30 or any other state or local enforcement agency may bring a civil
31 action to recover civil penalties authorized by subdivision (a).